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Congress of the United States

CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Damon Silvers

Congressional Oversight Panel Hearing on the TARP and Executive Compensation Restrictions

October 21, 2010

Good morning. Let me first say what a pleasure and honor it is to be with our new Chairman, Senator Ted Kaufman. Second, I would like to express my appreciation to all our witnesses and in particular to Kenneth Feinberg for appearing before us today, for being open to our views in the course of his work, and for his strenuous efforts in so many difficult circumstances on behalf of the American public.

Today our Panel holds its first hearing focused on issues of executive pay at companies that have received TARP funds.

TARP is a program which uses public funds to subsidize private businesses, and in the process extends to those private businesses implicit, and in some cases, explicit guarantees.

While there is an extensive debate about executive pay in private companies subject to market discipline, that debate is of limited relevance to companies that have capital at below market cost or have escaped bankruptcy due to the generosity of the American public.

We are here today to ask, what compensation practices at TARP recipient institutions were and are in the public interest.

I believe there are three dimensions to this question.

The first is, compensation practices under TARP should have contributed to a sense among the American public that TARP's purpose was public spirited, and not designed or managed to maintain the incomes or assets of the executives of the businesses that caused the financial crisis. This issue is critical to the very legitimacy of our national government and our capacity as a nation to address the ongoing economic crisis and to engage in national economic policy making in the future.

In this context, I am particularly curious about the somewhat peculiar conclusion drawn by the Special Master that billions of dollars of executive pay was "not appropriate," but was nonetheless in the public interest. I look forward to learning how that could be.

Second, compensation practices under TARP should have led to economic and career consequences for executives of failed firms. There was and is a profound public interest in mitigating the moral hazard created when executives of too big to fail institutions learn that in the words of the New York Attorney General, Heads I Win, Tails You Lose.

Unfortunately, one of the effects of TARP appears to have been to perpetuate the accumulation of wealth by the very people and institutions that seem to have been responsible for our nation's economic catastrophe. Last week, the Wall Street Journal reported that overall compensation at six of the largest TARP recipients was higher in 2009 and in 2010 than it had been in 2007—and during the four year period of the continuing financial crisis amounted to over $430 billion. This during a period when the real wages of Americans fell and returns to long term investors in these firms were catastrophic.

Finally, compensation practices under TARP should be aligned with the public's interest both as investor and as implicit guarantor, both of individual firms and of the financial system as a whole. In pursuing this goal, TARP has faced the problem of equity prices in a number of TARP recipients that were so low as to be effectively options. Executives with equity based compensation thus faced little real downside exposure and every reason to not restructure bank balance sheets. This situation would seem to encourage reckless risk taking like, say, pursuing foreclosures without having the proper documents by means of faked affidavits.

I hope today we can learn how TARP measures up against these objectives, and what approaches to executive pay make the most sense in light of these objectives.

Thank you.